

Appeal from a decision of the Milwaukee District Office, Bureau of Land Management, consenting to the drilling of a directional well for oil and gas through lands under lease to appellant. ES 034022.

Affirmed.

1. Conveyances: Reservations -- Mineral Lands: Mineral Reservation -- Minerals Exploration -- Oil and Gas Leases: Drilling -- Rights-of-Way: Generally

This Board will affirm a BLM decision consenting to directional drilling of an oil and gas well spudded on state lands, drilled through lands described in a Federal lease, and bottomed on private lands when there is a showing that the consent is conditioned upon taking steps to prevent unnecessary or unreasonable interference with the right of the Federal lessee.

APPEARANCES: M. J. Harvey, Jr., Dallas, Texas, pro se; B. O. Eubanks, District Land Manager, Houston, Texas, for Shell Western E & P Inc.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

M. J. Harvey, Jr., appeals from a decision of the Milwaukee District Office, Bureau of Land Management (BLM), dated October 16, 1987, giving consent to the Shell Western E & P Inc. (Shell) proposal to drill a directional well for oil and gas through lands subject to appellant's Federal oil and gas lease ES 034022. 1/

One day prior to the decision on appeal, the State of Michigan, Department of Natural Resources, issued a permit to drill the Rupp State Forest 1-21 well. This directional exploratory well was to be drilled by Shell and would be spudded in the SW 1/4 NW 1/4 NW 1/4 sec. 22, which was owned in fee by the State of Michigan and leased to Shell. As planned, the well bore would pass through the subsurface of lands subject to Harvey's Federal lease

1/ The lands described within ES 034022 (i.e., NE 1/4, N 1/2 SE 1/4 sec. 2, NE 1/4 NE 1/4, S 1/2 NE 1/4, NW 1/4 NW 1/4, SE 1/4 sec. 21, T. 33 N., R. 1 E., Michigan Meridian) were previously leased under acquired lands lease ES 3474.

and bottom in the SE 1/4 NE 1/4 NW 1/4 sec. 21, which was held privately 2/ in fee and leased to Shell.

In the decision on appeal, BLM determined that drilling and completing a single well bore through lease ES 034022 would not unreasonably or unnecessarily interfere with Harvey's rights under lease ES 034022. The decision stated BLM's finding that Federal resources would not be impacted, provided Shell properly circulated cement about the casing. Finding that Federal mineral resources and Harvey's rights would be protected, BLM informed Shell that it had no objection to Shell's proposal to drill through the subsurface of lease ES 034022. 3/

In his statement of reasons, Harvey argues that ES 034022 grants him the exclusive right to drill and extract oil and gas from the subsurface of this lease, even though a no-surface occupancy stipulation applies. For BLM to conclude that the well bore will not encounter hydrocarbons under ES 034022 is inaccurate, appellant maintains, because no one knows what is in the subsurface and at what depth. In appellant's view, drainage of minerals from ES 034022 could occur during drilling or upon completion of the well offlease. Rights retained by the United States as lessor pertain to the surface and have never been interpreted to include subsurface easements, Harvey maintains.

In order to address Harvey's arguments, we look first to the terms of lease ES 034022. Appellant correctly points out that this lease grants to him the exclusive right to drill for and extract oil and gas from the lands described therein. See Penroc Oil Corp., 84 IBLA 36, 40 (1984). We read this lease provision to give Harvey the exclusive right to bottom a well bore within the subsurface of the described lands.

Harvey also correctly notes that lease ES 034022 is subject to a no-surface occupancy stipulation. This provision was added at the recommendation of the State of Michigan, the owner of the surface of the described lands. Thus, if Harvey is to bottom a well in ES 034022, he will also have to directionally drill from offlease lands.

Though it is clear that appellant is the only party authorized to bottom a well in ES 034022, the United States, as lessor, has reserved certain rights in this conveyance. Section 6 of the lease provides: "Lessor reserves the right to continue existing uses and to authorize future uses upon or in the leased lands, including the approval of easements or rights-of-ways. Such uses shall be conditioned so as to prevent unnecessary or unreasonable interference with rights of lessee." (Emphasis added.)

2/ The record is unclear as to the ownership of this bottom hole tract. On page 2 of its Answer, Dec. 7, 1987, Shell states that this tract is owned by the State. In its Exhibit A at page 1, Shell indicates that it is privately owned.

3/ The consent was also contingent upon Shell's compliance with State requirements for operations within the Pigeon River Country State Forest.

In correspondence to BLM, dated September 28, 1987, Shell stated, "We stress that at no time will any known producing formations be penetrated while drilling on the captioned lease. Should a well be completed it will be fully cased to total depth." As noted above, BLM's decision of October 16, 1987, stated that Federal resources would not be impacted provided Shell cemented the casing for the well in a manner described in the decision.

BLM informed Harvey of Shell's intentions prior to giving its consent to Shell's directional drilling through the subsurface of ES 034022, and provided Harvey the opportunity to submit any technical or legal reasons why the proposed well would preclude the exercise of his rights under ES 034022. Harvey responded with views identical to those expressed in his statement of reasons.

[1] Upon review of the record and relevant case law, we find that section 6 of lease ES 034022 provides sufficient authority for BLM's action in this case. See Floyd A. Wallis, 65 I.D. 417 (1958). However, BLM's action should not be regarded as the approval of an easement or right-of-way. ^{4/} The agency's requirement that Shell case its well bore in a designated manner was designed to prevent unnecessary or unreasonable interference with the rights of the lessee. Appellant has offered no reason for concluding that his rights under ES 034022 may be jeopardized, and his concerns about drainage are wholly speculative at this time. Were such concerns more concrete, further consideration of BLM's action would be appropriate. See 1 Williams and Meyers, Oil and Gas Law § 218.6 (1986).

----- FOOTNOTES -----

----- END FOOTNOTES -----

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Milwaukee District Office is affirmed.

R. W. Mullen
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge.

^{4/} From the record, it appears that lands described by ES 034022 are "split estate" lands, i.e., the surface estate is held by the State of Michigan, and the mineral estate by the United States. In Mallon Oil Co., 104 IBLA 145, 150 (1988), the Board stated that generally the grantee of the mineral estate receives the right to explore for, produce, and reduce to possession, if found, the minerals granted, but not the stratum of rock containing the minerals. See, e.g., Ellis v. Arkansas Louisiana Gas Co., 450 F. Supp. 412, 421 (E.D. Okla. 1978); United States v. 43.42 Acres of Land, 520 F. Supp. 1042, 1045 (W.D. La. 1981). To the extent that no valuable minerals underlie ES 034022, the State of Michigan, as surface owner, owns the nonmineral strata. Emeny v. United States, 412 F.2d 1319, 1323 (Ct. Cl. 1969).

